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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

CLIVE CUSSLER et al.,

Plaintiffs and Appellants,

v.

CRUSADER ENTERTAINMENT, LLC

Defendant and Respondent.

B208738

(Los Angeles County  
Super. Ct. No. BC309114)

ORDER MODIFYING OPINION AND  
DENYING PETITIONS FOR REHEARING

[NO CHANGE IN JUDGMENT]

THE COURT:

The opinion filed herein on March 3, 2010, is modified as follows:

On page 4, first sentence of the second full paragraph, beginning “Apart from the” is deleted and the following sentence is inserted in its place:

Cussler disapproved of most of the screenplays submitted by  
Crusader, often without much consideration.

On page 24, first full paragraph, beginning “Crusader argues” is deleted and the following paragraphs are inserted in its place:

Crusader argues that Cussler’s negative public statements regarding the film Sahara were a breach of the implied covenant of good faith and fair dealing. At trial, however, Crusader argued that these statements were a breach of the *express* contract, specifically paragraph 17 of the contract. We agree with Crusader’s position at trial.

“The interpretation of a written instrument, even though it involves what might properly be called questions of fact [citation], is essentially a judicial function to be exercised according to the generally accepted canons of interpretation so that the purposes of the instrument may be given effect. [Citations.] Extrinsic evidence is ‘admissible to interpret the instrument, but not to give it meaning to which it is not reasonably susceptible’ [citations], and it is the instrument itself that must be given effect. [Citations.] It is therefore solely a judicial function to interpret a written instrument unless the interpretation turns upon the credibility of extrinsic evidence.” (*Parsons v. Bristol Development Co.* (1965) 62 Cal.2d 861, 865.)

Here, paragraph 17 provided that Cussler and his agents shall not “circulate, publish, or otherwise disseminate any news stories or articles, books, or other publicity containing [Cussler’s] name and relating directly or indirectly” to the film Sahara “unless the same are first approved by [Crusader], such approval not to be unreasonably withheld.” We hold that, as a matter of law, this provision prohibited Cussler from making *any* public statements—good or bad—regarding Sahara without Crusader’s approval. Cussler’s alleged disparaging statements about Sahara on the radio, in newspapers and on the internet, therefore, were a breach of the express terms of the contract. Accordingly, to the extent Crusader’s breach of the implied covenant cause of action was based on the public statements of Cussler and his agents regarding Sahara, the cause of action is superfluous and should be disregarded. (*Guz, supra*, 24 Cal.4th at p. 352; *Careau, supra*, 222 Cal.App.3d at p. 1395; *Aragon-Haas, supra*, 231 Cal.App.3d at p. 240.)

Appellants’ petition for rehearing is denied.

Respondent’s petition for rehearing is denied.